

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

UNITED STATES OF AMERICA,	:	CASE NO. 1:16CR224
	:	
Plaintiff,	:	
	:	CHIEF JUDGE PATRICIA A. GAUGHAN
-vs-	:	
	:	
RADU MICLAUS,	:	<u>MOTION TO VACATE</u>
	:	<u>RE-SENTENCING DATE</u>
Defendant.	:	

The Sixth Circuit has vacated Radu Miclaus's sentence and remanded for resentencing. (Sixth Cir. No. 19-4273, Dkt. 69). This Court scheduled Mr. Miclaus's resentencing hearing for January 27, 2022. For the reasons detailed below, Mr. Miclaus requests this Court vacate the current resentencing date.

On December 12, 2019, this Court sentenced Radu Miclaus to 192 months in prison. (R. 201: JE). In his direct appeal, Mr. Miclaus challenged, among other things, four guideline enhancements. On October 5, 2021, the Sixth Circuit found error in the application of two of the enhancements, vacated Mr. Miclaus's sentence, and remanded for resentencing. (Sixth Cir. No. 19-4273, Dkt. 67). Mr. Miclaus filed a petition for panel rehearing to address an alternative argument overlooked by the Court. The Court granted rehearing and issued an amended opinion on November 9, 2021. (Sixth Cir. No. 19-4273, Dkt. 69).

Mr. Miclaus also filed a petition for rehearing en banc, which is currently still pending in the Sixth Circuit. (Sixth Cir. No. 19-4273, Dkt. 68, 71). In affirming the application of the

guideline enhancement for trafficking in access devices, the panel split. The majority's opinion creates a new split among the circuits. It is unclear how long it will take resolve the additional litigation surrounding this enhancement. If the Court grants en banc, the case will be pending in the circuit for months. Even if the Court denies rehearing en banc, the issue is ripe for a writ of certiorari. It is important to get clarification on the application of this enhancement before resentencing Mr. Miclaus as this enhancement will affect his applicable guidelines range.

Mr. Miclaus respectfully requests this Court vacate the currently scheduled January 27, 2022 resentencing hearing. Additionally, because of the uncertainty of timing, Mr. Miclaus requests this Court wait to set a resentencing date and permit undersigned counsel to notify the Court as soon as the litigation on the trafficking in access devices enhancement has concluded.

Respectfully submitted,

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